

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

December 29, 2015

Lyle W. Cayce
Clerk

No. 15-50539
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARK VAN GOETZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:04-CR-49-1

Before GRAVES, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:*

Mark Van Goetz, federal prisoner # 36036-180, moves for leave to proceed in forma pauperis (IFP) on appeal from the district court's denial of his 18 U.S.C. § 3582(c)(2) motion seeking modification of his drug trafficking sentences based on Amendment 782 to the Sentencing Guidelines. By moving to proceed IFP, Goetz is challenging the district court's certification decision

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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that his appeal was not taken in good faith because it is frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

The district court implicitly determined that Goetz was eligible for a reduction but decided that a reduction was not warranted in Goetz's case. *See Dillon v. United States*, 560 U.S. 817, 826 (2010). We review that decision for an abuse of discretion. *United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011).

Goetz argues that the district court failed to reasonably consider the sentencing factors set forth in 18 U.S.C. § 3553(a) when it denied his motion. The record reflects that the district court considered Goetz's motion as a whole and considered the § 3553(a) factors and that its denial is not based on a clearly erroneous assessment of the evidence. Goetz cannot show that the district court abused its discretion by denying him a sentence reduction. *See Henderson*, 636 F.3d at 717; *United States v. Whitebird*, 55 F.3d 1007, 1010 (5th Cir. 1995).

This appeal does not present a nonfrivolous issue. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, Goetz's motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.